

**DAVID J. ULIVARRI**  
Claimant

**BAILEY MOVING & STORAGE**  
Respondent

**TRAVELERS INSURANCE COMPANY**  
Insurance Carrier

## ORDER

## ISSUES

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Whether the claimant suffered an accidental injury that arose out of and in the course of his employment with the respondent is one of the issues enumerated in K.S.A. 44-534a(a)(2) that grants the Appeals Board jurisdiction to review a preliminary hearing order.

The Administrative Law Judge granted claimant's request for temporary total disability compensation, medical treatment and payment of past medical bills. Respondent appeals, arguing that the claimant failed to prove that he suffered an accidental injury that arose out of and in the course of his employment with respondent.

Claimant alleged that he injured his back while lifting a toolbox while employed by the respondent on November 14, 1994. He received treatment for his injury through T. J. Hamilton, D.O. On November 22, 1994, he was first seen by Dr. Hamilton and he gave a history of a work-related injury to his back when he felt a pop that resulted in pain down his left leg. Dr. Hamilton, in a certificate dated February 17, 1995, stated that claimant could not perform his job duties for the respondent from November 14, 1994 to February 10, 1995, because the job duties included lifting over ten (10) pounds, pushing, pulling and bending.

Claimant presented his own testimony and that of his fiancée, Marie Luna. Respondent's evidence included testimony of Gabriel Aguilar, claimant's supervisor, and Jan M. Rottinghaus, a physical therapist. Claimant testified that he injured his back at work on November 14, 1994 and his fiancée verified claimant's testimony. Gabriel Aguilar testified that claimant notified the boss, Scott Criqui, that he hurt his back at work on November 14, 1994, but claimant did not tell him and further claimant did not show symptoms of a back injury on that date. In fact, claimant notified him that he had injured his back over the weekend prior to commencing work on November 14, 1994. Jan Rottinghaus testified that the history that the claimant gave her indicated that the claimant injured his back on November 5, 1994 while moving heavy furniture.

The Appeals Board finds that the Administrative Law Judge had an opportunity to personally observe in this case all the witnesses except the physical therapist whose testimony was taken by deposition. In granting claimant's request for benefits, the Administrative Law Judge had to determine that both the claimant's testimony and his fiancée's testimony were credible. The Appeals Board, for preliminary hearing purposes, affirms the Preliminary Hearing Order entered by Administrative Law Judge Floyd V. Palmer on April 27, 1995, as the testimony of both the claimant and of Marie Luna, along with medical records admitted, establish that the claimant's low back injury arose out of and in the course of his employment with the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer, dated April 27, 1995, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1995.

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BOARD MEMBER

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BOARD MEMBER

c: Jack L. Heath, Topeka, KS  
Bret C. Owen, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
David A. Shufelt, Acting Director